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File No. O. Leases/50

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Subject:—Opinions regarding leases

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C O N T E N T S.

Legal Department File No. O. Leases,/50.

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BKS. 27/6/ 4c.

Office of the R.L.A.

A lease of the villages of Dewnarem, Berlen, Kerele, Cheney, and Versavey Bherebhat in the Bombay Suburban District was given in 1825 to one Dhakjee Dadajee of Bombay. The lease appears on pages 59 to 62 of Government Selection No.CLXXX New Series. It is a lease in perpetuity, or so long as the conditions and covenants contained therein are observed, and is granted with a view to induce the ~~him~~ lessee, his heirs and assigns to invest their capital and bestow their labour in making "agricultural and other improvements" on the demised land. It appears that the lessee has contracted to sell Survey No.133 (Gurcharan) of the Kirol village (land so demised) to M/S.Pradhan and Chitnis of Thana for construction of buildings for Maharastrian Society. The question for R.L.A's consideration is whether Government can prevent the lessee from selling the grazing lands in question.

2. The material ~~pxm~~ portion of the lease is as follows:-

"Dakjee Dadajee, his heirs and assigns shall and lawfully may from time to time and at all times for ever hereafter peaceably and quietly have, hold, use, occupy, possess and enjoy the said several villages, pieces or parcels of land, hereditaments and premises hereby granted and released or intended so to be with their and every of their appurtenances and receive and take the rents, issues and profits thereof to and for his or their own use, and benefit, subject of course to the yearly payment of the said sum of rupees." The words "heirs and assigns" convey a heritable and an alienable estate. There are no restrictions on the lessee in the matter of disposal of the demised lands. It has been held that open places in village sites not being the property of

individuals, belong to the Inamdar. (Cf.I.L.R. 23 Bom.39 and I.L.R.38 Mad.108). This principle will be extended to the grantees or lessees of the whole village lands in perpetuity and it may be said that open spaces such as the Gurcharan belong to the lessee. There is no obligation on the lessee to maintain grazing lands. Besides, the lease does not specify any land as Gurcharan and as stated by the Collector Bombay Suburban District in his letter dated 29-10-1949 the land in question is shown as Gurcharan in the Jangal Kharda of 1883. If therefore by dedication or customary usage the villagers have acquired any right of grazing over such land, they can claim to prove these rights against the lessee or his assignee in a court of law. The recital in the preamble that the lands were leased for agricultural and other improvements cannot in any way restrict or limit the absolute nature of the grant. In any case the words "other improvements" cannot be construed ejusdem generis with "agricultural" so as to prohibit non-agricultural use of the demised lands. It does not, therefore, appear that the lessee can be prohibited from alienating the Gurcharan land for house building purposes.

Id/-J.R.D. 26/5
Additional Secretary to Government.

U.R. to R.D.No. 7336 ,dated the 30th May 1950.

BKS. 27/6/ 4c.

Renewal of lease granted to Belapur Company Ltd.

The questions referred for the R.L.A's consideration are:

(1) Whether, in view of clause 3 of the lease, rent can be charged at the rate prevailing for similar lands in the x vicinity.

(2) Whether clause 11 of the lease would empower Government to levy the water rate on volumetric basis at the rates charged to growers in the vicinity.

2. Question (1) -- The concluding portion of clause 3 reads as follows :

> "Provided further that upon each renewal of this lease, the rent in respect of the lands held under this clause shall be revised x so that the same shall represent the same multiples of the revised annual assessment then obtaining in the neighbourhood in respect of other occupied land of like class."

It is quite clear from this recital that the multiple of 10 times or three times, as the case may be, which has already been fixed, cannot be varied. The intention was that, along with the revision of the annual assessment of the lands in the neighbourhood, the rent under the lease would be revised retaining the same multiple. The real difficulty in this case has been that the annual assessment of the neighbouring lands has not been revised although it was due for revision as far back as 1933-34 and 1945-46. If a strict technical view were taken, the Company will be entitled to a renewal on the basis of th unrevised assessment now obtaining and in that case they would undoubtedly get a further guarantee of 30 years of that unrevised assessment. That was never the intention although thi result has followed from the postponement of the revision settlement. Negotiations may,

therefore, be made with the Company with a view to induce them to agree to a new clause upon renewal to the effect that the rent should be revised with effect from the date when the new revision settlement comes into force in relation to the neighbouring lands during the currency of the next 30 years' period. That would be a just and equitable solution to which the Company, unless they want to stand on their rights under the letter of the law, should not object.

3. Question (2) - The answer to this question depends upon the concluding sentence of clause 11 which reads as follows :

> "The Company shall pay to the lessor a rate for the supply of such water for sugarcane cultivation of Rs.45 per acre for perennial and Rs. 8 per acre for rabi irrigation extending up to eight months, the lessor having the right to increase the said water rate to the same rate as is charged to outside cultivators immediately on each renewal of the lease."

It is true that the existing rate is on the basis per acre, but the sentence read as a whole does not guarantee that the same basis shall for ever be continued. The intention obviously was to bring the rate in line with the rate charged to outside cultivators. By rate we mean a charge or a price fixed according to ratios, scale or standard; an amount of a charge or payment having relation to some other amount or basis of calculation. The lessor had the right to increase the former water rate to the same rate as is charged to outside cultivators. The expression "same rate" would not only mean the actual charge but the charge in relation to the volumetric basis which is

now the current basis . The intention being to establish an identity of rates The lessor, therefore, would be withim his rights to so increasing the former rate as to make the new volumetric rate applicable even to the Company.

Id/-P.M.L.
20/6

Remembrancer of Legal Affairs.

ε U.R. to R.D.No. 8476 Dated 21st June 1950.

BKS. 27/6/ 4c.

Resumption of land granted to Sabar Valley Kaolin and Starch Industries, Ltd.

Since no condition of forfeiture of the land is attached to the grant, it would not be competent for Government to resume possession of the land, apart from the question of breach of any of the conditions thereof, for the breach of a condition may give rise to a claim for damages and not for resumption of the land.

It appears that the villagers have been agitating against the grant of the land to the Sabar Valley Kaolin and Starch Industries, Ltd., Arsodia, mainly on the ground that the land comprised in the grant was originally granted to them for grazing purposes and as such the Idar State could not dispose of the land. Clause 1 of the grant provides that "cultivable land not included at present in the holding of any person or persons and not exceeding 800 acres to be leased out to the above company on the already fixed rates of revenue assessment of the State (to be paid to the revenue department at recovery time each year) but free from Khed Haras (occupancy price). On the land so leased out, the Company will be at liberty to grow their own maize, jowari, wheat or any other crops as might suit their purpose." The words, "in the holding of any person or persons" in this clause are very significant. "Holding" must naturally be given the meaning assigened to that term in the Land Revenue Act (cf. sec. 3(12) of the Bombay Land Revenue Code,1879). It means a portion of a land held by a holder and holder is one who is lawfully in possession of land. These words in the clause appear, therefore, to exclude the land which is in the private ownership of any person or persons, for the land which already vested in any person other than the State could not be granted by it. The question relevant would, therefore, be whether the

land which has been granted to the Company was or was not included in the holding of any person or persons, that is to say, was or was not in the ownership of the villagers of Chitroda. They appear to rely on two old documents passed by Thakore Bharatsinhji Gopalsinhji, one of which is in the file. In that document, the Thakore has stated that the land was granted for the grazing of cattle of the village Chitroda and that right could be exercised by them till the sun and moon shine on the earth and that it was gifted permanently tothem, their children and future children. This grant was subject to one condition, which is as follows:

"If at all the grass is required for Jagir horses, some part of this land will be reserved from it and after cutting the grass of such reserved land, the cattle of the village Chitroda will be allowed to graze on it."

It appears clear from this document that it was not an absolute gift of the land itself but it was a grant of right to graze on the land. This right would amount to a licence when it is read with the condition attached to it. It appears, therefore, difficult to construe this document as an absolute transfer of the land to the villagers. Moreover, the position regarding the land being used as grazing is itself involved in doubt. The Collector in his report dated 4th November 1949 at page 37 ante stated that it was not possible to connect the land referred to in the document with the land sold by the Idar State authorities to the Sabar Valley Kaolin and Starch Industries, Ltd.,Arsodia. Later on the Mamlatdar has reported that the land granted by jagir to the villagers is the same in dispute which the villagers of Chitroda have asked for. But the Mamlatdar has not given any reasons in xx support of the identity of the land. In the circumstances it appears inadvisable to take any action in the matter. Besides, Government has no power to revoke the grant or to resume the land when the agreement does not provide for any such power. It would be for the villagers themselves to proceed against the Company in court if they can prove the identity of the land

and the invalidity of the grant made by the Idar State to the Company.

Id/-P.M.L. 20/6
Remembrancer of Legal Affairs.

U.R. to R.D. No. 8457 ,dated the 20th June 1950.

BKS. 27/6/ 4c.

Office of the R.L.A.

There appears no legal objection to dispensing with the execution of a formal lease deed as desired by the Government of India provided the terms thereof are agreed to by that Government and the Government of Bombay State.

Id/-P.M.L.
31/10
Remembrancer of Legal Affairs.

U.R. to P. & S.D.No. 15220, dated the 1st Nov.1950.

BKS. 27/6/ 4c.

Office of the R.L.A.

The Urban Immovable Property Tax is neither a municipal or local rate or tax nor is it annual ground rent or assessment payable to Government or to any local authority so as to fall under clause (d) of the Tenant's covenants and therefore Government is not liable to bear or pay the same.

Id/-P.M.L.
8/4
Remembrancer of Legal Affairs.

U.R. to P.W.D. No.4837 ,dated the 10th April 1950.

BKS. 27/6/ 4c.

No. 12838
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, (Bombay No.1) 14th November 1949.

To

The Director of Development Department Chawls,
Public Works Department, Secretariat,
Fort, Bombay No. 1.

Subject :- Recovery of rent for the notice period and compensation for use and occupation thereafter from the tenants who are served with notices to quit.

Sir,

With reference to your letter No. IHS/1734 of 1949, dated 23rd August 1949, I have the honour to state that rent for the notice period and compensation for use and occupation should not be accepted from the tenant pending the eviction proceedings and a claim for the same should be made in the suit for eviction.

Yours faithfully,

Id/-P.M.L.
Remembrancer of Legal Affairs.

Please see R.L.A.'s opinion dt. 6/2 accompanying letter No.1672 dt/- 6/2/50. (in O.City Land Revenue/50)

BKS. 27/6/ 4c.

Office of the R.L.A.

There can be no ejectment of tenant except by process of the courts or by statutory authority. A term for summary eviction cannot, therefore, be included in the lease (see R.L.A's opinion No. 3581, dated the 7th May 1945 and No. 4381 dated the 6th May 1948). If Government forcibly re-enters on expiry of the lease, that would amount to dispossession of the tenant other-wise than in due course of law and Government would be liable for action (R.L.A's opinion No. 5392 dated the 21st July 1945). In the circumstances, there is no alternative except to have recourse to a court of law when possession is ~~referred~~ refused by the tenant on expiry of his lease.

Id/-P.M.L.
9/2
Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 1992 ,dated the 10th February 1950.

BKS. 27/6/ 4c.

Office of the R.L.A.

Whether Government can refuse to renew the lease granted to the Minister of Works in the United Kingdom.

Since under clause 5(d) of the lease the lessee has the option of renewal for a further term and since he has given notice to exercise that option, Government will have to renew the lease and the fact that Government wants the demised premises for its own use, would be no valid ground for refusing the renewal.

Id/-P.M.L.
6/12
Remembrancer of Legal Affairs.

U R. to P.W.D. No. 17320 ,dated the 7th December 1950.

BKS. 27/6/ 4c.

Office of the R.L.A.

The presumption made by the Manager, D.D.Chawla in his letter at p. 75 ante is correct provided the occupant of the premises, whether a close relation or a distant relation or no relation of the deceased tenant, is a subtenant. Otherwise the procedure indicated by the Labour and Housing Department at p. 78 ante should be followed.

Id/-P.M.L.
15/11
Remembrancer of Legal Affairs.

U.R. to L. & H. D. No. 16086 ,dated the 17th November 1950.

BKS. 27/6/ 4c.